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| 909 | 7590 | 04/18/2005 | EXAMINER | |
| PILLSBURY WINTHROP SHAW PITTMAN, LLP | | | HAYES, JOHN W | |
| P.O. BOX 10500 | | | ART UNIT | |
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3621

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,208

Applicant(s)

NAKAJIMA, KEIICHI

Examiner

John W Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35,38,40-43,45-49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-35, 38, 40-43, 45-49 and 51 in the response filed 26 January 2005 is acknowledged.
2. Claims 36-37, 39, 44 and 50 have been canceled.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-4, 11, 17, 22, 25, 31, 33, 35 and 38** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-2 recite the phrase "synchronizing a communication to said billing terminal with a communication by said paying terminal when said settlement apparatus sets up a transaction identifying number which identifies the transaction.". The concept of "synchronization" is unclear. It appears that "synchronization" is intended to be some form of authentication of the billing and paying terminals to each other and this is assumed for purposes of examination. This assumption is supported by Applicants'

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Specification at page 4, which states "the billing terminal and the paying terminal, both of which are synchronized with each other by the transaction identifying number".

Synchronous operation is understood in computer engineering to be operation under control of a system clock. A thorough review of the Specification shows no reference to a clock or timing pulse, common concepts with synchronization of computers in a network. The Specification is replete with references to synchronizing, but provide no clarification as to what is meant by the Claims. Occurrences of the concept which might provide clarity are merely circular, (e.g. at page 4, which refers to "a synchronization confirmation signal which indicates establishment of synchronization) and leave all references to the concept of synchronization vague and indefinite. These comments apply to all Claims discussed in the rejections directly below as well.

Claims 3-4, 11, 17, 22, 25, 31, 33, 35 and 38 recite the phrase "said processing unit synchronizes a communication to the billing terminal with a communication to the paying terminal and said first communication unit transmits to the billing terminal a synchronization confirmation signal which indicates establishment of synchronization". Again, it appears that authentication is occurring, but this is not clear from the claim language.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It recites the phrase "to the paying terminal and *receives an answer the paying terminal inputting corresponding* to said order from the paying terminal". The phrase italicized is unclear.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-10, 40-41 and 46-47** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,332,133 *Takayama* in view of US 5,826,241 to Stein et al.

As to Claims 1, 3, 40-41 and 46-47, *Takayama* discloses the invention substantially as claimed including in a settlement apparatus performing a settlement of a transaction, which communicates with a billing terminal performing billing of the transaction and with a paying terminal performing paying of the transaction, the apparatus comprising:

a first communication unit (Fig. 3, ele. 303) connecting to the billing terminal (Fig. 3) via a first communication network (Fig. 3, ele. 313);

a second communication unit (Fig. 1, ele. 104) connecting to the paying terminal (Fig. 1, ele. 100; Fig. 2A, 2B) via second communication network (Fig. 1, ele. 106); and

a processing unit for processing the settlement of transaction (Fig. 1, eles. 102, 103), said processing unit synchronizing a communication to the billing terminal with a communication to the paying terminal (Col. 45, lines 16-22) when said processing unit sets up a transaction identifying number to identify the transaction (Col. 71, lines 32-40).

Takayama does not specifically disclose that the transmission of the transaction identification number by the paying terminal is an element of synchronization. Stein discloses this limitation at Col. 7, line 33 to Col. 9, line 45, particularly Col. 8, lines 1 1-18. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* with the transmission of a transaction identifier number because this would provide a uniquely generated identifier to facilitate confirmation that a transaction was valid. See Stein at Col. 7, lines 58-60 and Col. 8, line 37 to Col. 9, line 23 for support of this motivation. Note also that both references are directed to settlement of financial transactions; see *Takayama* at Title and Abstract, at lemst, and Stein at Col. 3, line 38 to Col. 4, line 8.

Concerning Claims 2 and 4, *Takayama* discloses that the billing terminal communicates over a telephone line at Fig. 1, eles. 110,109. *Takayama* further discloses that the paying terminal connects to the settlement apparatus by radio telephone communications at Col 43, line 59 to col. 44, lines 29.

Concerning Claim 5, *Takayama* discloses receipt of a purchase amount from a billing terminal for settlement at Col. 4, line 11 to col. 5, line 17. *Takayama* further discloses a settlement completion notification at Col. 11, lines 49-60 and a receipt to the paying terminal of a settled amount at Col. 52, lines 6-10. Official Notice is taken that it was old and well known to process settlements after purchase confirmation. For example, the simple use of a checksum would provide confirmation of a purchase amount. It would have been obvious to one of ordinary skill in the art at the time of the invention to use such purchase confirmation in the invention of *Takayama* because this would help assure correct charges to payors.

Concerning Claims 6-7, Official Notice is taken that unique identification of financial terminals and confirmation through such identification is old and well known in the financial arts. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* with such features to enhance security and reduce loss.

Concerning Claims 8-10, *Takayama* discloses a purchase history at Col. 71, lines 26-58.

9. **Claims 11-12 and 17-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,332,133 *Takayama* in view of US 5,826,241 to Stein et al, as applied above, and further in view of US 6,332,134 to Foster et al.

As per **Claims 11 and 17-18,** *Takayama* does not specifically disclose the limitations of this claim. Foster discloses that a billing unit (Fig. 2, ele. 206) in receipt of a transaction identifier (Fig. 2, Order Number) sends the transaction identifier (Fig. 2, Order Number) to a paying unit (Fig. 2, ele 204) which then forwards the transaction identifier to a processing unit (Fig. 2, ele. 202). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the transaction number generated by the processing unit of *Takayama* for circulation in the system of Foster to assure that all parties to the transaction showed the same bonafdes and were therefore properly authenticated. The

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desirability of the combination is indicated by Foster in a description from Col. 2, lines 26-40 of

transaction execution quoted below:

The present invention includes a financial transaction system that solves the problem of security for consumer credit card information transmitted over the Internet. The financial transaction system reverses the process with regard to card transactions conducted via computers and computer networks. Instead of cardholders transmitting their card numbers to merchants, the system obtains merchant information and requests that the cardholder's own card company pay the merchant. The cardholder's credit card number never travels across the Internet. The merchant never learns of the cardholder's card number. In one embodiment, only a shipping address is disclose to the merchant which comes directly from the card company along with a notification that the payment has been made.

With respect to Claims 12 and 19-21, *Takayama* does not specifically disclose that the first communication unit supplies authentication information. Official Notice is taken that it was old and well known to centralize distribution of secured information, as in the manner claimed. For example, the use of a secure authentication server protected information and improved transaction security. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* to use authentication information form a central server (first communication unit of a settlement system) because this would provide a secure and convenient way to distribute, receive and authenticate information.

10. **Claims 13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,332,133 *Takayama* in view of US 5,826,241 to Stein et al and US 6,332,134 *Foster et al*, as applied above, and further in view of US 5,604,802 *Holloway*.

As to Claim 13, *Takayama* discloses the invention substantially as claimed. See the discussions above. *Takayama* does not specifically disclose the use of a facial portrait of a user to authenticate. *Holloway* discloses this limitation at Col. 6, line 39-41. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* to use facial image authentication of *Holloway* because this would provide a reliable and effective authentication.

As to Claim 14, *Takayama* discloses the invention substantially as claimed. See the discussions above. *Takayama* does not specifically disclose the use of a password to authenticate. *Holloway* discloses this limitation at Col. 6, line 39-41. It would have been obvious to one of ordinary skill in the art

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at the time of the invention to modify *Takayama* to use the password authentication of *Holloway* because this would provide a reliable and effective authentication.

As to Claims 15-16, *Takayama* discloses the invention substantially as claimed. See the discussions above. *Takayama* does not specifically disclose the use of requested information to authenticate. *Holloway* discloses this limitation at Col. 6, line 39-41 as a PIN. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* to use the supplied information of *Holloway* because this would provide a reliable and effective authentication.

11. Claims 22-24, 32-33, 38, 42-43, 45, 48-49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,332,133 *Takayama* in view of US 5,826,241 to Stein et al and US 5,321,242 to Heath, Jr.

As per **Claims 22, 33, 38, 42-43, 45, 48-49 and 51,** *Takayama* discloses a billing terminal performing billing of a transaction against a paying terminal for the transaction, by communicating with a settlement apparatus settling the transaction, comprising:

- a communication unit which connects to the settlement apparatus via a communication network, said communication unit transmitting an identification number to identify the billing terminal to the settlement apparatus and receiving from the settlement apparatus a synchronization confirmation signal indicating establishment of synchronization with the paying terminal (Figures 1-5);
- a processing unit which performs billing of the transaction (Figure 6 and associated text).

Takayama does not specifically disclose receiving a synchronization confirmation signal indicating establishment of synchronization with the paying terminal. Stein discloses this limitation at Col. 7, line 33 to Col. 9, line 45, particularly Col. 8, lines 1 1-18. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* with the transmission of a transaction identifier number because this would provide a uniquely generated identifier to facilitate confirmation that a transaction was valid. See Stein at Col. 7, lines 58-60 and Col. 8, line 37 to Col. 9, line 23 for support of

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this motivation. Note also that both references are directed to settlement of financial transactions; see Takayama at Title and Abstract, at least, and Stein at Col. 3, line 38 to Col. 4, line 8.

Takayama further fails to specifically disclose transmitting an identification to identify the billing terminal. Heath, Jr. discloses the use of terminal identification numbers and using these numbers to authenticate terminals of a transaction (Col. 2, line 40-Col. 3 line 21). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Takayama and include the terminal identification numbers of Heath, Jr. in an effort to authenticate the terminals involved in the transaction and increase the security.

As per **Claim 23**, *Takayama* discloses that the billing terminal communicates over a telephone line at Fig. 1, eles. 110,109. *Takayama* further discloses that the paying terminal connects to the settlement apparatus by radio telephone communications at Col 43, line 59 to col. 44, lines 29.

As per **Claim 24**, *Takayama* further disclose attribute information of the user of the paying terminal (Figure 8).

As per **Claim 32**, *Takayama* does not specifically disclose the limitations of this claim. Foster discloses that a billing unit (Fig. 2, ele. 206) in receipt of a transaction identifier (Fig. 2, Order Number) sends the transaction identifier (Fig. 2, Order Number) to a paying unit (Fig. 2, ele 204) which then forwards the transaction identifier to a processing unit (Fig. 2, ele. 202). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the transaction number generated by the processing unit of *Takayama* for circulation in the system of Foster to assure that all parties to the transaction showed the same bonafdes and were therefore properly authenticated. The desirability of the combination is indicated by Foster in a description from Col. 2, lines 26-40 of transaction execution quoted below:

The present invention includes a financial transaction system that solves the problem of security for consumer credit card information transmitted over the Internet. The financial transaction system reverses the process with regard to card transactions conducted via computers and computer networks.

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Instead of cardholders transmitting their card numbers to merchants, the system obtains merchant information and requests that the cardholder's own card company pay the merchant. The cardholder's credit card number never travels across the Internet. The merchant never learns of the cardholder's card number. In one embodiment, only a shipping address is disclose to the merchant which comes directly from the card company along with a notification that the payment has been made.

12. **Claims 25-31 and 34-35** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,332,133 *Takayama* in view of US 5,826,241 to Stein et al and US 5,321,242 to Heath, Jr, as applied above, and further in view of 6,332,134 B1 to Foster.

As per **Claims 25-27 and 34-35**, *Takayama* fails to disclose the limitations of this claim. Foster discloses that a billing unit (Fig. 2, ele. 206) in receipt of a transaction identifier (Fig. 2, Order Number) sends the transaction identifier (Fig. 2, Order Number) to a paying unit (Fig. 2, ele 204) which then forwards the transaction identifier to a processing unit (Fig. 2, ele. 202). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the transaction number generated by the processing unit of *Takayama* for circulation in the system of Foster to assure that all parties to the transaction showed the same bona fides and were therefore properly authenticated. The desirability of the combination is indicated by Foster in a description from Col. 2, lines 26-40 of transaction execution quoted below:

The present invention includes a financial transaction system that solves the problem of security for consumer credit card information transmitted over the Internet. The financial transaction system reverses the process with regard to card transactions conducted via computers and computer networks. Instead of cardholders transmitting their card numbers to merchants, the system obtains merchant information and requests that the cardholder's own card company pay the merchant. The cardholder's credit card number never travels across the Internet. The merchant never learns of the cardholder's card number. In one embodiment, only a shipping address is disclose to the merchant which comes directly from the card company along with a notification that the payment has been made.

With respect to Claim 28-30, *Takayama* does not specifically disclose that the first communication unit supplies authentication information. Official Notice is taken that it was old and well known to centralize distribution of secured information, as in the manner claimed. For example, the use

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of a secure authentication server protected information and improved transaction security. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Takayama* to use authentication information from a central server (first communication unit of a settlement system) because this would provide a secure and convenient way to distribute, receive and authenticate information.

As per **Claim 31**, *Takayama* does not specifically disclose the limitations of this claim. Foster discloses that a billing unit (Fig. 2, ele. 206) in receipt of a transaction identifier (Fig. 2, Order Number) sends the transaction identifier (Fig. 2, Order Number) to a paying unit (Fig. 2, ele 204) which then forwards the transaction identifier to a processing unit (Fig. 2, ele. 202). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the transaction number generated by the processing unit of *Takayama* for circulation in the system of Foster to assure that all parties to the transaction showed the same bonafdes and were therefore properly authenticated. The desirability of the combination is indicated by Foster in a description from Col. 2, lines 26-40 of transaction execution quoted below:

The present invention includes a financial transaction system that solves the problem of security for consumer credit card information transmitted over the Internet. The financial transaction system reverses the process with regard to card transactions conducted via computers and computer networks. Instead of cardholders transmitting their card numbers to merchants, the system obtains merchant information and requests that the cardholder's own card company pay the merchant. The cardholder's credit card number never travels across the Internet. The merchant never learns of the cardholder's card number. In one embodiment, only a shipping address is disclose to the merchant which comes directly from the card company along with a notification that the payment has been made.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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14. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/630,557. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claim 1 of copending application No. 09/630,557 claims all the limitations of the instant claim 1, however, claim 1 of copending application No. 09/630,557 differs since it further recites additional claim limitations including wherein the billing terminal notifies the transaction identifying number to at least one of the paying terminal and a user of the paying terminal. However, it would have been obvious to a person of ordinary skill in the art to modify claim 1 of copending application No. 09/630,557 by removing this limitation resulting generally in the claims of the present application since the claims of the present application and the claim recited in copending application No. 09/630,557 actually perform a similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

14. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hayes whose telephone number is (703)306-5447. The examiner can normally be reached Monday through Friday from 5:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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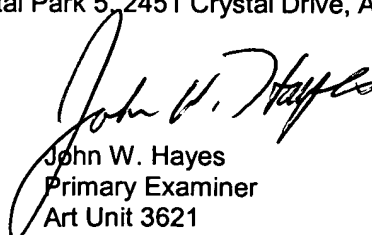
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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington,
VA, 7th floor receptionist.


John W. Hayes
Primary Examiner
Art Unit 3621

April 11, 2005